

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-032-02-1-5-00487
Petitioners: David R. & Patricia J. Sullivan
Respondent: Department of Local Government Finance
Parcel: 009-09-11-0150-0006
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held in November of 2003. The Department of Local Government Finance (the DLGF) determined that the assessment for the property is \$92,000 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 16, 2004.
3. The Board issued a notice of hearing to the parties dated January 27, 2005.
4. Special Master Barbara Wiggins held the hearing in Crown Point on March 4, 2005.

Facts

5. The subject property is located at 1102 South Broad Street, Griffith, Indiana. The location is in St. John Township, Lake County.
6. The subject property is a single-family residence on 1.01 acres of land.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed value of property as determined by the DLGF:
Land \$13,300 Improvements \$78,700.
9. Assessed value requested by Petitioner on the Form 139L:
Land \$8,900 Improvements \$40,000.
10. Persons sworn as witnesses at the hearing:
David R. Sullivan, taxpayer,
Stephen H. Yohler, assessor/auditor.

Issues

11. The Petitioner contends the property is over assessed because flooding limits its marketability.
12. The Respondent stated the property has a negative influence factor for wetlands and the home is assessed as being in poor condition.

Record

13. The official record for this matter is made up of the following:
 - a) The petition,
 - b) The tape recording of the hearing labeled Lake Co – 1163,
 - c) Petitioner Exhibit 1 – Summary of arguments,
Petitioner Exhibit 2 – North view of flood during first week of January 2005,
Petitioner Exhibit 3 – Back yard flooded in first week of January 2005,
Petitioner Exhibit 4 – Notice of Final Assessment,
Petitioner Exhibit 5 – Two pictures of flood in July 2003,
Petitioner Exhibit 6 – Form 139L dated April 16, 2004,
Petitioner Exhibit 7 – Terry Barczak letter dated June 7, 1993,
Petitioner Exhibit 8 – Form 130 R-A filed December 3, 1992,
Petitioner Exhibit 9 – Receipt for Form 130 R-A dated December 3, 1992,
Petitioner Exhibit 10 – Data display current owner dated November 20, 1992,
Petitioner Exhibit 11 – Newspaper article dated January 20, 1993,
Petitioner Exhibit 12 – Newspaper article dated January 7, 1993,
Petitioner Exhibit 13 – SBA disaster loan package dated January 1, 1991,
Petitioner Exhibit 14 – Pictures of floods in 1989 through 1990,
Petitioner Exhibit 15 – Viscloskey letter dated April 30, 1993,
Respondent Exhibit 1 – Form 139L,
Respondent Exhibit 2 – Property record card for subject property,
Respondent Exhibit 3 – Photograph of subject property,
Board Exhibit A – Form 139L,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Sign in Sheet,
 - d) These Findings and Conclusions.

Analysis

14. The most applicable laws are:
- a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also*, *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
 - c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioners did not provide sufficient evidence to make a prima facie case. This conclusion was arrived at because:
- a) The Petitioners presented testimony, photographs, and newspaper articles that prove the property floods. That fact alone is not enough to make Petitioners' case. Petitioners failed to prove that the current negative influence factor is wrong. Furthermore, they failed to prove what a correct influence factor might be.
 - b) The Petitioners did not present probative evidence establishing how the flooding problem affects the market value of the property. David Sullivan testified that real estate agents told him the property is unmarketable. Such conclusory testimony is not probative evidence and does not help to establish market value. While it is conceivable that constant flooding would have an affect on the market value, no probative evidence quantifies the degree to which the flooding affects the market value-in-use of this property.
 - c) The Petitioners failed to present evidence proving what the correct assessment should be. The Petitioners requested a value of \$48,900 on the Form 139L. The Petitioners indicated that the asking price for the property would be \$80,000. The Petitioners did not present any explanation or probative evidence indicating how those values were determined. The Petitioners did not present probative evidence supporting those values.
 - d) The 2002 assessment is based on the market value-in-use of the property as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4, (incorporated by

reference in 50 IAC 2.3-1-2). Petitioner presented information from a 1992 tax appeal. For the 1992 assessment, the property was originally assessed for \$9,160. As a result of the appeal, the property's assessment was changed to \$7,940. The Petitioners failed to establish how the previous assessment is relevant to the 2002 assessment. The previous assessment is of no probative value in for use in the 2002 assessment because each tax year stands on its own. *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998).

Conclusion

16. The Petitioners failed to make a prima facie case. The burden never shifted to the Respondent to rebut the Petitioner's evidence. The Board finds in favor of Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.